



Audit Committee minutes

Wednesday 14 December 2016

Members

Ailsa Beaton (chair)
Roger Barlow

Non-Executive Director
Independent Audit Committee
member

Attendees

ICO

Elizabeth Denham
Simon Entwisle

Paul Arnold

Sally Hanson

Information Commissioner
Deputy Information Commissioner and
Deputy Chief Executive Officer
Head of Customer and Business
Services
Interim Head of Finance

Internal Auditors

Phil Keown
Paul Eckersley

Grant Thornton
Grant Thornton

External Auditors

Paul Keane
David Eagles
Alison Langridge

National Audit Office
BDO (by phone)
BDO (by phone)

Secretariat

Peter Bloomfield

Senior Corporate Governance Manager

1. Introductions and apologies

- 1.1. There were apologies from Jane McCall, Non-executive Director, who was unable to attend the meeting. Jane had recently been appointed as a member of the Audit Committee and had fed her comments on agenda items in by email.
- 1.2. Paul Keane was welcome to the audit committee as the partner in charge of the ICO and DCMS external audits.

2. Declaration of interests

- 2.1. There were no declarations of interest.

3. Action points from the Audit Committee meeting of the 12 September

- 3.1. The minutes of the last meeting, agreed in correspondence, were confirmed as being accurate.
- 3.2. Peter Bloomfield advised that the extension of the internal audit contract had been agreed and the variation agreement would, subject to any concerns expressed today by the Committee, be signed shortly. There would be a discussion on this at the end of the meeting in the absence of the auditors.
- 3.3. Peter Bloomfield also updated the Committee on an outstanding action point from the last Committee meeting. This related to the need to re-procure the internal audit contract from 1 April 2018. The Governance and Procurement teams were both alert to the need to pick up new internal audit frameworks when released.
- 3.4. Peter Bloomfield confirmed that the Management Board action in respect of directors' responsibilities would be complete once the guidance for annual reporting for 2016/17 was published.

4. The Commissioner's update on matters affecting the ICO.

- 4.1. Elizabeth Denham provided an update on issues affecting the ICO. These included her recent focus on the relationship with government and Whitehall in respect of decisions around the implementation of the General Data Protection Regulation (GDPR).

- 4.2. In addition Elizabeth Denham highlighted management and structural changes that were in the process of being made.
- 4.2.1. Two new Non-executive Directors have been appointed; Jane McCall and David Cooke.
- 4.2.2. Robert Luke had been appointed as the new Deputy Commissioner (Policy) with responsibility for forging links across government and Whitehall. He would be in post at the end of January 2017.
- 4.2.3. Simon Entwisle, Deputy Commissioner, would be retiring in July 2017, and the ICO would be recruiting for a Deputy Commissioner (Operations) and a Deputy Chief Executive Officer.
- 4.2.4. Elizabeth Denham was also going to appoint a General Counsel to provide legal advice to the Commissioner, and a Strategic Technology Advisor post along with expanding the policy teams to cope with implementation of the GDPR.

It was confirmed that the new organisational structure was to be in place by the end of March, and that management responsibilities in areas recently subject to internal audit would generally remain as now.

- 4.3. Taking work forward in the ICO the focus would be on building capacity around technology and assurance work and dealing with an expansion of staff numbers to undertake the increased role for the ICO under the GDPR.
- 4.4. Plans for a Grants and Contributions Scheme would be discussed later in the meeting and the ICO was developing an International Strategy.
- 4.5. Elizabeth Denham also updated the Committee on ICO action in respect of charities and their compliance with the Data Protection Act.

5. Risk management

- 5.1. Peter Bloomfield introduced the risk register, explaining that two new risks in respect of GDPR and change and two new risks in respect of finances, had been added following comments made at Management Board and Audit Committee.
- 5.2. The Committee raised the issue of the ICO being able to demonstrate it was a going concern in respect of its annual report and accounts. This arose from continuing uncertainty

over data protection fee income and implementation of GDPR.

- 5.3. This issue had been identified and discussed with the NAO. The Annual Report and Accounts 2016/17 would need to reflect the position on signing. The Committee considered that formally alerting the Department for Culture, Media and Sport (DCMS) would be helpful.
- 5.4. The ICO confirmed that it had been involved with the DCMS in preparation of an impact assessment identifying the cost (for the ICO) of implementing the GDPR. It was also noted that the GDPR obliged the government to provide a regulator with adequate funding and DCMS was aware of this. However, changes to the funding of the ICO needed primary legislation which depended on parliamentary time being available.
- 5.5. In respect of the risk register Jane McCall had noted that many of the assurances were inputs rather than outputs (eg meetings did not necessarily mitigate risks), and mitigating actions needed to have a positive impact to help manage the risk. She also considered that in respect of resource planning the focus was on capacity rather than capability.

6. Financial issues affecting the ICO

October finance report

- 6.1. Paul Arnold introduced the October financial report as the latest available. The November report is in preparation.
- 6.2. The ICO was concerned about a reduction in the rate of increase of notification fee income over the summer. November receipts (and indications from early December) were stronger although income was below forecast year to date. The ICO was constantly monitoring the position and there were opportunities to both reduce and increase spending towards the year end depending on fee income actually received over the last few months.
- 6.3. Paul Arnold reported that he did not know why the increase in fee income had dipped. The ICO had checked with data controllers who had let notifications expire but this had not indicated anything out of the ordinary. Paul Arnold also confirmed that the ICO did regularly chase expired notifications on a risk basis (ie organisations processing sensitive personal data, but given the recent dip it was undertaking 100% checks; following up by email and phone.

- 6.4. It was confirmed that there was no danger of an overspend.
- 6.5. Paul Keane asked about whether the ICO would spend up to its capital allowance or not? Paul Arnold advised that most capital expenditure is IT related and is reviewed regularly. Expenditure was on track.
- 6.6. The possibility of a budget underspend on legal advice was noted and the Committee questioned whether the money could be carried forward into next financial year. It was confirmed that to do this required an actual obligation, rather than intent, to pay.
- 6.7. The Committee also asked whether or not DCMS had provided funding for work the ICO would have to undertake having taken on the Telephone Preference Service. The ICO confirmed that it had not. The £60k budget allocated was for legal costs arising from re-procuring the contract for the service.
- 6.8. Sally Hanson identified and corrected an error in figures detailing civil monetary penalties collected figures.

Fee forecasting and financial planning

- 6.9. It was explained that the ICO had made a decision on its fee forecast for next year. This was option 2 of the paper which had been tabled at this meeting and had previously been to Senior Management Team. It was confirmed that this option was the original estimate for 2016/17 (BV1) plus 4%. The Committee noted the estimate and confirmed it was content.

Funding of the grants and contributions scheme

- 6.10. Following discussion at the last meeting the ICO presented ways of funding a proposed Grants and Contributions scheme. There was discussion as to whether or not surplus funding this financial year could be carried forward into next to help fund the scheme. There was on-going discussion with DCMS on this. The NAO considered that as things stood, without a formal commitment the money could not be accrued; normal accounting rules needed to be followed.
- 6.11. It was considered unlikely that the scheme would be up and running this financial year, although it was suggested that a pilot scheme might be capable of being fast-tracked. It was also suggested that match funding could increase the impact of ICO expenditure.

Action point 1: Paul Arnold to look further at the possibility of carrying forward surplus income from this to the next financial year to help fund the Grants and Contributions Scheme and to ensure that the NAO was content with any proposals.

7. Outstanding audit recommendations

- 7.1. Peter Bloomfield introduced the report on performance in clearing audit (internal and external) recommendations. In general recommendations were being acted upon to deadline. However, some of the recommendations arising from the recent finance review would be delayed by a month due to the need to make changes to the procurement management system. These changes needed to be tested, and be made at month end. Paul Arnold confirmed that an operational decision had been made to do this at the end of January.
- 7.2. Whilst noting the reason, Audit Committee expressed the concern about the presentational aspect of deadlines set and agreed being missed
- 7.3. Grant Thornton suggested that greater challenge from auditors, if they thought deadlines agreed to might be too tight, was needed.
- 7.4. Paul Arnold confirmed that the final recommendations from the Cryptographic Controls review would be met.

8. Internal audit

Internal audit update

- 8.1. Grant Thornton presented the report on progress against the internal audit plan 2016/17. The reviews of monetary penalties and cryptographic controls had been agreed and were tabled at this meeting. The IT asset management (phase 1) review was close to completion. In addition the data protection law reform review, stakeholder review and investigations review were in planning.
- 8.2. The follow up review had originally been scheduled for January but following discussion with the ICO this would now be completed in February. The delay would allow more of the reviews to have been completed.

Recovery of monetary penalties

- 8.3. In respect of the audit of monetary penalties, Grant Thornton had not identified problems but had suggested

improvements to the process relating to, in particular, the better sharing of data internally and of reporting.

- 8.4. The Committee asked whether the ICO was aggressive enough in chasing monetary penalties. Simon Entwisle confirmed that the ICO had to be balanced in its approach but did aim to be as effective as possible. The introduction of director liability next year would represent an additional lever in helping the ICO collect monetary penalties.
- 8.5. The Committee also asked whether dealing with delays in paying penalties was covered in the work flows the Committee had been presented with prior to the meeting.

Action point 2: Peter Bloomfield to check the work flows and guidance and liaise with Enforcement as to whether action on delays in paying penalties was covered.

Cryptographic controls

- 8.6. In respect of this audit, Grant Thornton considered that processes had improved and were content with governance in the area. Audits take place and results are passed to managers. The audit was shown as amber purely because the audit had not, at that time, been completed. It had now been done and if the review had taken place later it would have been green.

9. External audit

- 9.1. Alison Langridge introduced the audit planning report on the 2016/17 financial statement. It detailed how the audit was to be conducted, the timetable, fee and identified significant financial risks. The risks included the issue already discussed of the ICO being a going concern because of uncertainty over the implementation of the GDPR and the financial implications. The question was asked as to whether the NAO would be discussing the issue with the DCMS. Paul Keane advised that it was for the ICO to continue to raise with DCMS but that DCMS might be able to provide a letter of comfort if necessary.
- 9.2. BDO asked the Audit Committee to consider the identified risks and to agree them. The Committee did so.
- 9.3. BDO also asked the Committee if it had any knowledge of actual or suspected fraud the auditors needed to be aware of. The ICO and internal auditors confirmed a nil response.
- 9.4. It was noted that the fee had reduced to £30k.

10. Fraud, whistleblowing and security incidents

- 10.1. The report providing an overview of fraud, whistleblowing and security incidents over the last quarter was presented for information. Whilst recognising the need to keep the report generally high level the Audit Committee requested the opportunity to look at some of the issues raised in more detail.

Action point 3: Peter Bloomfield to arrange for someone to attend the next Committee meeting to provide more information.

11. Any other urgent business

- 11.1. There was no other urgent business.